

EXHIBIT N

In The Matter Of:

IN RE: LEHMAN BROTHERS HOLDINGS INC., ET. AL.

JOHN COSTANGO - Vol. 1
June 7, 2011

HIGHLY CONFIDENTIAL INFORMATION
GOVERNED BY PROTECTIVE ORDER

MERRILL CORPORATION
LegalLink, Inc.

225 Varick Street
10th Floor
New York, NY 10014
Phone: 212.557.7400
Fax: 212.692.9171

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

-----x
In re: : Chapter 11
LEHMAN BROTHERS HOLDINGS
INC., et al. : Case No.

Debtors :
08-13555(JMP)

-----x
LEHMAN BROTHERS HOLDINGS :
INC., and OFFICIAL :
COMMITTEE OF UNSECURED :
CREDITORS OF LEHMAN :
BROTHERS HOLDINGS INC., : Adversary
et al., : Proceeding No.
Plaintiff and :
Plaintiff Intervenor, : 10-03266(JMP)

vs. :

JP MORGAN CHASE BANK, N.A., :
Defendant. :

-----x
HIGHLY CONFIDENTIAL INFORMATION
GOVERNED BY PROTECTIVE ORDER

June 7, 2011
9:31 a.m.

Videotaped Deposition of JOHN COSTANGO,
held at the offices of Quinn Emanuel Urquhart &
Sullivan, LLP, 51 Madison Avenue, New York, New
York, before TAMMEY M. PASTOR, a Registered
Professional Reporter, Certified LiveNote
Reporter and Notary Public within and for the
State of New York.

1 JOHN E. COSTANGO-HIGHLY CONFIDENTIAL

2 worked with us on some part of it. I don't 10:56:35

3 remember exactly how involved she was. Then 10:56:43

4 there was internal counsel as well. 10:56:45

5 Q. Who from internal counsel would 10:56:47

6 you consider part of this group? 10:56:49

7 A. Edward Mayfield. 10:56:50

8 Q. Would you consider Mr. Lansing to 10:56:54

9 be part of this group as well? 10:56:55

10 A. He was my boss. 10:56:56

11 Q. Was he involved day-to-day in the 10:57:00

12 Project Tassimo? 10:57:02

13 A. If he felt he needed to be, some 10:57:02

14 days he was more involved than others. 10:57:05

15 Q. Would you consider yourself to be 10:57:06

16 the primary person responsible for this aspect 10:57:07

17 of Project Tassimo? 10:57:10

18 A. Well, what do you mean by this 10:57:19

19 aspect? 10:57:20

20 Q. The team we've been describing. 10:57:20

21 That team. 10:57:23

22 A. They worked for me. 10:57:23

23 Q. How would you describe the role 10:57:28

24 this team played in Project Tassimo? 10:57:29

25 A. I describe the team that worked 10:57:31

1 JOHN E. COSTANGO-HIGHLY CONFIDENTIAL

2 for me on Project Tassimo as having a 10:57:35
3 coordination role. We were in some ways the 10:57:37
4 glue that held together a very large team of 10:57:43
5 experts in the various types of asset classes. 10:57:48
6 We had a coordination role. We were involved 10:57:53
7 in data collection and reporting. 10:57:55

8 Q. Would you consider yourself to be 10:57:58
9 the primary person responsible for this 10:57:59
10 coordination role within Project Tassimo on a 10:58:02
11 day-to-day basis during September and October 10:58:05
12 and into November, December 2008? 10:58:07

13 A. I spent almost all of my time 10:58:12
14 during this period on this project. James 10:58:14
15 Lansing was also very involved. I don't want 10:58:17
16 to take anything away from his involvement. So 10:58:19
17 it was one of the two of us or both. 10:58:23

18 Q. Is it okay with you for ease of 10:58:29
19 reference if we call the group of people we've 10:58:32
20 just been describing the Tassimo team? 10:58:34

21 A. I would actually prefer you pick 10:58:37
22 something else. I think of the Tassimo team as 10:58:39
23 having over a hundred people on it. 10:58:41

24 Q. Sure. I'm not trying to put 10:58:42
25 words in your mouth at all. How about we use 10:58:44

1 JOHN E. COSTANGO-HIGHLY CONFIDENTIAL

2 special situations group, is that a good wrap
3 around?

10:58:46

10:58:49

4 A. That works for me.

10:58:49

5 Q. Okay. Were there any meetings of

10:58:50

6 the special situations group regarding Project

10:58:56

7 Tassimo on a regular basis during September and

10:59:00

8 October of 2008?

10:59:02

9 A. I would say that we worked

10:59:07

10 together continuously on this project for,

10:59:09

11 through October of 2008 we all sat next to each

10:59:11

12 other. I don't know that we had formal

10:59:16

13 meetings, but we were certainly constantly

10:59:19

14 talking about it.

10:59:22

15 Q. Were there any meetings at which

10:59:22

16 Mr. Lansing would participate with the special

10:59:25

17 situations group in September and October 2008?

10:59:27

18 A. I don't remember any sit-down

10:59:32

19 meetings but, again, we all sat very close to

10:59:33

20 each other and we had constant dialogue.

10:59:36

21 Q. Could you describe a little bit

10:59:38

22 the physical setting of you sitting very close

10:59:40

23 to one another.

10:59:42

24 A. Well we moved desks during this

10:59:48

25 period. I couldn't really give you a good

10:59:50

1 JOHN E. COSTANGO-HIGHLY CONFIDENTIAL

2 September as open posted to October?

11:02:46

3 A. I believe so.

11:02:48

4 Q. During that meeting with Mr.

11:02:51

5 Milam did you or Mr. Lansing or anyone else

11:02:52

6 from the special situations group provide any

11:02:55

7 instructions to Mr. Milam regarding how assets

11:02:56

8 that his desk handled should be liquidated as

11:03:01

9 part of Project Tassimo?

11:03:05

10 A. Yes.

11:03:08

11 Q. What were those instructions?

11:03:08

12 A. As I recall there were Mr.

11:03:09

13 Lansing's instructions to Rob Milam. They were

11:03:15

14 specifically that his traders were to make this

11:03:20

15 a priority. That this was very important for

11:03:23

16 the firm.

11:03:26

17 That they were to treat TSS pool

11:03:30

18 like a customer. With one exception. And that

11:03:33

19 is that they were not to make bid/ask on the

11:03:38

20 trades.

11:03:41

21 Q. Did Mr. Milam react in any way to

11:03:52

22 those instructions?

11:03:54

23 A. Yes.

11:04:06

24 Q. How did he react?

11:04:07

25 A. Well, I remember him wishing that

11:04:08

1 JOHN E. COSTANGO-HIGHLY CONFIDENTIAL

2 Q. Were there any procedures in 11:52:55
3 place to prevent that from happening? 11:52:57

4 A. The general instructions were 11:53:05
5 that if you can find a bid in the market and 11:53:07
6 that's a real bid, you can meet or exceed that 11:53:11
7 bid. You, the trading desk. If you don't and 11:53:15
8 you hit the bid, then the buy and sell trade 11:53:18
9 needs to be the same. Those were the general 11:53:21
10 instructions to the traders. 11:53:23

11 Q. When you say meet or exceed the 11:53:25
12 bid, you mean the J.P. Morgan trading desk 11:53:27
13 could only buy an asset from the Tassimo 11:53:30
14 portfolio to the extent it was buying it at a 11:53:32
15 level that was equal to or higher than bids it 11:53:35
16 received in the market? 11:53:38

17 A. The instructions were if you go 11:53:41
18 out and you get bids, you can meet or exceed 11:53:42
19 the bid. If you don't meet or exceed the bid 11:53:48
20 and you think you've got a real bid, then you 11:53:51
21 sell at that price. There is a buy trade and a 11:53:53
22 sell trade at the same price. 11:53:55

23 Q. Was there any obligation to seek 11:53:58
24 bids in the marketplace when selling Tassimo 11:53:59
25 assets? 11:54:03

1 JOHN E. COSTANGO-HIGHLY CONFIDENTIAL

2 MR. VIZCARRONDO: Objection to 11:54:03

3 form. 11:54:07

4 A. I wouldn't characterize it as an 11:54:07
5 obligation. The general instructions were to 11:54:09
6 liquidate these assets in a way that is 11:54:11
7 appropriate in the context of the market and 11:54:14
8 the individual asset type. And we went to the 11:54:16
9 traders who were the experts in that to devise 11:54:18
10 that strategy. 11:54:21

11 Q. Was there any instructions more 11:54:24
12 specific than the ones you just gave whether 11:54:27
13 bids ought to be sought for the sale of any 11:54:30
14 Tassimo asset? 11:54:32

15 A. Generally speaking the traders 11:54:36
16 were out seeking bids for the assets. That's 11:54:39
17 kind of what they do. There were situations 11:54:43
18 where for various reasons they didn't go out 11:54:45
19 and seek bids, but those would have been 11:54:49
20 exceptions. 11:54:51

21 Q. In such an exception was it 11:54:52
22 necessary that there be some sort of sign off 11:54:54
23 beyond the particular trader making such trade? 11:54:56

24 A. Sorry, did you say was it 11:54:59
25 necessary? 11:55:05

1 JOHN E. COSTANGO-HIGHLY CONFIDENTIAL

2 a bid/ask despite the instruction you just
3 described?

12:03:01

12:03:04

4 A. I'm not aware of any.

12:03:06

5 Q. Was there ever any process put in
6 place to ensure that that did not happen?

12:03:07

12:03:11

7 A. You know, the process as I think
8 about it were these discussions, this dialogue
9 that was happening at all levels with the
10 traders about the importance of this process,
11 the objective of the process and the fact that
12 everyone was expected to conduct themselves
13 appropriately.

12:03:18

12:03:20

12:03:26

12:03:30

12:03:35

12:03:38

12:03:41

14 Q. When you talk about the
15 importance of the process and objectives of the
16 process, what was communicated to the traders
17 regarding the objectives of the process?

12:03:44

12:03:45

12:03:47

12:03:50

18 A. The traders were aware -- by
19 traders I'm referring to sort of the line
20 traders, not the senior traders -- the traders
21 were aware that this project was very important
22 for the firm. It had the attention of senior
23 management. It had the support of their
24 bosses. And they were to conduct themselves as
25 if this portfolio was from a significant

12:03:55

12:03:58

12:04:00

12:04:02

12:04:08

12:04:12

12:04:15

12:04:19

1 JOHN E. COSTANGO-HIGHLY CONFIDENTIAL

2 client.

12:04:23

3 Q. Were traders made aware this
4 collateral was related to Lehman Brothers?

12:04:28

12:04:30

5 A. Generally, no. They were not
6 told that.

12:04:32

12:04:33

7 Q. Why not?

12:04:34

8 A. I actually don't know why not.

12:04:34

9 Other than that it was made clear in the
10 initial meeting with Matt Zames and the senior
11 traders that we were not to be discussing with
12 the other traders that this was in fact Lehman
13 Brothers.

12:04:40

12:04:43

12:04:46

12:04:48

12:04:50

14 Q. And your last answer sort of had
15 it, but to make it clear, the senior traders
16 were aware this was Lehman Brothers collateral?

12:04:53

12:04:55

12:04:57

17 A. The senior traders at least who
18 were in that room were aware that it was Lehman
19 Brothers collateral because that was mentioned
20 at the time.

12:04:59

12:05:01

12:05:06

12:05:08

21 Q. Are you aware of any other way
22 that the trading desks or individual traders at
23 those desks could have made money on Tassimo
24 trades other than by keeping the bid/ask?

12:05:13

12:05:16

12:05:18

12:05:22

25 A. Well, if a trader is doing a

12:05:33

1 JOHN E. COSTANGO-HIGHLY CONFIDENTIAL

2 Q. Other than the less than a penny 12:11:49
3 policy that we already discussed, was there any 12:11:52
4 policy at the level of the special situations 12:11:54
5 group around a floor for prices for Tassimo 12:11:56
6 trades? 12:12:00

7 A. Not that I can remember. 12:12:00

8 Q. When selling assets in an auction 12:12:13
9 process out of Tassimo were there any 12:12:15
10 requirements around the number of accounts each 12:12:20
11 asset would need to be showed? 12:12:22

12 MR. VIZCARRONDO: Objection to 12:12:25
13 form. 12:12:29

14 A. You know, the custom and practice 12:12:29
15 in these markets varies considerable based on 12:12:30
16 the type of assets that we're talking about. 12:12:33
17 So we chose not to have a one-size-fits-all 12:12:36
18 approach. And we asked the traders to do what 12:12:39
19 was most appropriate in the context of the 12:12:44
20 market for their specific asset type. 12:12:46

21 Q. Did the trading desks ever come 12:12:54
22 back to you with any written procedures around 12:12:55
23 auction processes? 12:12:58

24 A. As I testified earlier, I can't 12:13:01
25 remember any written procedures from individual 12:13:03

1 JOHN E. COSTANGO-HIGHLY CONFIDENTIAL

2 next day and making a profit, so. 15:59:02

3 Q. So -- 15:59:04

4 A. The strategy didn't go that far. 15:59:05

5 The strategy is what was the best way to access 15:59:07

6 this market. In this particular instance, it 15:59:10

7 was determined that going to two very large 15:59:12

8 bidders was the best way to access the market. 15:59:14

9 And that's what they did. 15:59:18

10 Q. My question was you said the 15:59:20

11 traders created the strategy for bidding out 15:59:24

12 these assets; correct? 15:59:27

13 A. Generally speaking, yes. 15:59:28

14 Q. Was there ever a situation where 15:59:32

15 that wasn't the case? 15:59:33

16 A. Sometimes the traders were doing 15:59:34

17 that in consultations with their bosses and who 15:59:36

18 knows who else. The traders were the ones who 15:59:38

19 generally speaking came up with the strategy. 15:59:41

20 Q. My question if that strategy the 15:59:46

21 traders came up with included a plan to turn a 15:59:47

22 profit the next day on assets they'd taken on 15:59:50

23 to their own books, would that be okay to you 15:59:52

24 or acceptable to you as the person who was 15:59:54

25 coordinating the Tassimo liquidation? 15:59:56